

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>ROBERT L. & MARY ELLEN STAMM,</p> <p>v.</p> <p>Respondent:</p> <p>DELTA COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 58208</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on December 14, 2011, Sondra W. Mercier and Louesa Maricle presiding. Petitioners were represented by Susan M. Stamm, Esq. Respondent was represented by Bradley Kolman, Esq. Petitioners are protesting the classification and the 2011 actual value of the subject properties.

Subject properties are described as follows:

**Parcel No. 3497-071-00-001 (Account No. R016186), and
Parcel No. 3497-181-00-001 (Account No. R016194) in
Delta County, Colorado**

The subject properties consist of two adjoining parcels of undeveloped vacant land. The property identified by Account No. R016186 is a 155.77-acre parcel and Account No. R016194 consists of a 160-acre parcel. The properties have rolling topography with dissecting canals/ditches, gullies, ravines, and crevices. The parcels do not have irrigation water or utilities, are not fenced, and do not have any other improvements. The only access to the two parcels is by a ditch road that follows a canal owned by Uncompahgre Valley Water Users. The ditch road is considered legal access.

Petitioners are requesting agriculture classification for the subject properties for tax year 2011. In the event agriculture classification is not granted, Petitioners are requesting actual values for the properties for tax year 2011 based on the range of \$15,000.00 to \$20,000.00 per 40 acres of land.

Respondent assigned a value of \$99,693.00 to Account No. R016186 and \$102,400.00 to Account No. R016194 for tax year 2011.

Petitioners contend that the subject parcels have been misclassified by Respondent for tax year 2011. During the 41 years Petitioners have owned the properties, they have both historically had agriculture classification and the use of the land has not changed. The only access to the subject parcels is from a ditch road that crosses many owners' properties, the parcels do not have irrigation water, utilities, or any improvements, and the rough topography makes it very difficult to drive across much of the land. For these reasons, the only use is as ranch land. Petitioners contend that the use of the subject properties and the surrounding properties is all agriculture and only the subject properties have been reclassified as vacant land. Petitioners further contend that the sales used by Respondent in the valuation of the subject properties are not comparable to the subject parcels because they have county maintained road access, at least some utilities, mineral rights, or structural improvements.

Robert L. Stamm testified that he provided Respondent with information about what crops the Soil Conservation Service said could be grown in the soils present on the subject parcels and that a sheepherder used both properties to graze sheep for approximately 20 years in exchange for general oversight of the land. There was no written lease with the sheepherder allowing grazing; it was a long-standing verbal agreement entered into through an intermediary. Mr. Stamm testified that in August 2010 Petitioners entered into a written 5-year lease for \$200.00 per year that allows livestock grazing on the parcels and a copy of the lease was provided to Respondent. Mr. Stamm testified that Petitioners have not grown crops for harvest on the parcels and have not had their own animals grazing on the properties. Mr. Stamm questioned whether Respondent toured enough of the two properties to determine that there has been no livestock grazing on the land.

Petitioners presented two comparable sales ranging in sale price from \$17,000.00 to \$24,900.00 and in size from 40 to 41.17 acres. Adjustments were not made to the sales for size, location, or any other characteristics. Based on these sales, Petitioners are requesting 2011 actual values for each of the subject properties ranging from \$15,000.00 to \$20,000.00 per 40 acres of land.

Respondent presented a value of \$99,693.00 for subject property Account No. R016186 and a value of \$102,400.00 for Account No. R016194, based on the market approach.

Respondent's witness, Mr. Gregory L. Cress, a Certified General Appraiser with the Delta County Assessor's Office, presented three comparable sales ranging in price from \$65,000.00 to \$135,000.00 and in size from 35.32 to 40 acres. On a price per acre basis, the sales ranged from \$1,625.00 to \$3,822.00. Two of the sales were 40-acre parcels and both sold for \$1,625.00 per acre, had similar topography and, like the subject properties, did not have irrigation water or utilities. The witness testified that none of these sales had building improvements at the time of sale. The highest of the three sales was given less weight because it had superior access, a domestic water tap, irrigation water, and electric service. The witness concluded to an initial value for the subject parcels of \$1,600 per acre, then deducted 60% of that value to reflect the poor access to the subject properties. After that adjustment was made, the witness concluded to a value of \$640.00 per acre for

the subject properties. Applying that value to each parcel resulted in a conclusion of value of \$99,693.00 for Account No. R016186 and a value of \$102,400.00 for Account No. R016194.

Mr. Cress testified that he had been to the subject properties but had not seen livestock grazing on the properties or any evidence that livestock had been on the land. He also did not see any evidence of agriculture crops being grown on the parcels. The witness testified that Petitioners are allowed to take water from the ditches just for a personal garden, which is not sufficient to grow crops. With regard to the classification of surrounding properties, the witness testified that other property owners had provided documentation to support livestock grazing and/or the growing of crops for harvest.

Petitioners failed to present sufficient probative evidence and testimony to prove that the subject property was used for dry land grazing or any other agriculture use, in accordance with state statute, for tax year 2011.

The statutory definition of agricultural land is “[a] parcel of land...that was used the previous two years and presently is used as a farm or ranch...or that is in the process of being restored through conservation practices.” Section 39-1-102(1.6)(a)(I), C.R.S. The statutory definition of ranch is “a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit.” Section 39-1-102(13.5), C.R.S.; *see also Douglas County Board of Equalization v. Clarke*, 921 P.2d 717, 721 (Colo. 1996). Further, a taxpayer’s subjective intent to use the land for grazing is not relevant for classification purposes. *Clarke*, 921 P.2d 724.

The Board agrees with Petitioners that livestock grazing is a potential use for the subject properties. However, the Board finds that Petitioners did not provide any evidence that there has been actual livestock grazing on the subject properties during the relevant years to qualify them for agriculture classification for tax year 2011. Petitioners, not Respondent, have the burden to prove the actual use of the land supports the agriculture classification. When asked when he last saw livestock grazing on the subject properties, Mr. Stamm testified that it could have been several years. He does not live close to the subject properties and when he has been there, he has been more concerned with looking for dumping activity on the land rather than the presence of livestock. The Board concludes that Petitioners have failed to meet the burden of proving that the 2011 classification of the subject properties should be agriculture.

ORDER:

The petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within

forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 4th day of January, 2012.

BOARD OF ASSESSMENT APPEALS

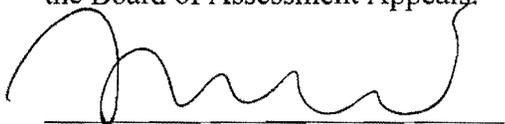


Sondra W. Mercier



Louesa Maricle

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.



Milla Crichton

